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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Assessment and Collection of Charges)
for FCC Proprietary Remote Software)
Packages, On-Line Communications)
Service Charges, and Bidder's)
Information Packages in Connection)
with Auctionable Services)

WT Docket No. 95-69

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FEDERAL COMMUNICATIONS COMMISSION

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To: The Commission

COMMENTS OF RURAL TELECOMMUNICATIONS COALITION

The Rural Telecommunications Coalition (RTC), by its attorneys, hereby respectfully submits these Comments in response to the Notice of Proposed Rule Making ("NPRM") released by the Federal Communications Commission ("FCC or Commission") on May 16, 1995, in WT Docket No. 95-69.

I. STATEMENT OF INTEREST

RTC is a coalition of small businesses providing diverse telecommunications services throughout the United States, predominantly in rural areas¹. Each member of the coalition anticipates either expanding its existing operations or venturing into a complementary, ancillary telecommunications service. Given the Commission's propensity to auction spectrum, it is highly probable that each coalition member will participate in at least one future auction. Therefore, each member and the coalition as a whole has a strong interest in the cost of remote access to auction proceedings and the outcome of this rule making.

¹ RTC's members include: GVNW Inc./ Management, Table Top Telephone Company, Central Texas Telephone Cooperative, Inc., Central Texas Wireless TV, Inc., Cellular Mobile Systems of St. Cloud General Partnership, Central Stearns Comis, Inc., Communications Alternatives, Inc., Arvig Cellular, Inc., Lakedale Cellular, Inc., Melrose Telecom, Inc. and Sherburne Tel-Com, Inc.

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II. COMMENTS

The Commission intends, by this NPRM, to develop a fee schedule for remote electronic application filing and bidding, that will apply to all future auctions. While RTC applauds the Commission for permitting and encouraging remote electronic bidding, it is concerned that the establishment of a single fee schedule that applies to all participants in any future auction, regardless of service, is premature, inequitable, and inconsistent with Congress' intent that small businesses and rural telephone companies be afforded an equal opportunity to compete for newly allocated spectrum.

A. Small Businesses and Rural Telephone Companies Are Likely to Be Heavily Reliant on Remote Bidding

Many rural or small, out-of-town businesses do not retain Washington, D.C. - based counsel. These businesses must either send a representative to Washington to participate in an auction, or access the proceedings remotely. A small business with a limited number of employees may not have personnel to spare. The burden on such businesses is exacerbated by the unpredictable duration of a particular auction. Even if a business retains Washington D.C. - based FCC counsel, the cost of such counsel's attendance at the auction may be prohibitively expensive. The best alternative available to out-of-town auction participants is remote electronic bidding. The RTC supports the FCC in its effort to design and utilize this bidding method. However, the Commission should bear in mind, that many of the widespread entities who will need to rely on remote bidding are also some of the most under-capitalized entities seeking spectrum. Because small, rural telecommunications companies are

less likely to have a more cost-effective option for auction participation than other bidders, to ensure the participation of these entities, it is particularly important that the cost of remote access be manageable.

B. A Four Dollar Per Minute Access Fee Is Excessive

The Commission uses as its price model for remote access to the auction an average of the per-minute access fees charged by the only two on-line legal data bases currently in existence. In light of the fact that the market price was previously established by the PCS A and B block auction, there is no rational support for this pricing method. In that auction the contractor hired to provide the on-line service charged \$23.00 per hour. This averages about \$0.38 per minute -- not \$4.00 per minute as proposed by the FCC. It is unfair for future bidders to pay over ten times the amount "deep-pocketed" MTA auction bidders paid. If the FCC is unable to provide the service economically, it should continue to contract for the provision of the services.

Moreover, on-line legal data base service providers are able to inflate the charges² for their services because they are the only providers of this valuable information. The prices charged by these companies are what the market will bear, and they are entitled to make a profit from their services. The FCC, on the other hand, is not entitled to profit at the expense

² According to the NPRM, Westlaw charges \$4.05 per minute and Lexis-Nexis charges \$4.42 per minute. NPRM, ¶ 10.

of auction bidders who may not even acquire spectrum³. Accordingly, the service provided by commercial on-line data bases and the service provided by the FCC are not so comparable that one should serve as a model for the other.

If the FCC is to provide on-line service, RTC believes the charge per minute for remote auction access should be based on the true and "full cost" of the 900 service as charged to the FCC by the telephone carrier, not "market price," as suggested by the Commission, because there is no "market" to which this proposed service belongs. The NPRM does not disclose the anticipated cost to the FCC of the 900 telephone service remote bidders will use to access an auction. If \$4.00 per minute is the price that has been quoted to the FCC for use of 900 telephone service, then RTC understands that the Commission is merely recouping its expenditures pursuant to Congressional authorization. However, failure to publicize the exact cost of 900 service to the FCC leaves only the excessive "market price" theory to support the FCC's proposal.

C. Electronic Bidding Costs Should Be Treated Like Other Aspects of an FCC Auction and Be Alternatively Priced for Designated Entities

The FCC has recognized that designated entities require some federal government assistance in order to compete in spectrum auctions. Accordingly, it has allowed such entities to take advantage of bidding credits, reduced down payments and installment payment plans.

³ As the FCC aptly noted: "...the imposition of fees for Government-provided products and services that confer benefits on identifiable recipients over and above these benefits received by the general public are encouraged". NPRM at ¶ 3 (emphasis added). Arguably, bidders that participate, but do not win spectrum have received no benefit at all. The FCC has not addressed how it can justify charging these excessive fees to losing bidders.

It should be equally apparent to the Commission that not all auction participants can afford to pay the same electronic bidding access charges and that some sort of compensatory mechanism is needed to allow such entities to compete for spectrum.

There needs to be a low cost option for designated entities seeking remote access to monitor and take part in FCC auctions. At this time, the only alternatives are to attend one's self, pay a representative to attend the auction, or pay an exorbitant fee. The 900 service fee as proposed adds up to \$2,000.00 per eight-hour day -- and it is not unthinkable that at some points during an auction, a business may need constant monitoring of the proceedings. If this per-minute charge is multiplied by the months into which one auction could stretch, the sum is clearly prohibitive for someone who may also be counting on bidding credits to enable the acquisition of needed spectrum.⁴

The Commission is basing its price for remote access to the auction on the per-minute fees charged by two on-line legal data bases. There are alternatives to these legal services charges, however. Naturally, all the information found on-line through a legal data base can also be accessed by going to the printed source itself. This may be less convenient to the researcher, but it bypasses the costly service altogether. Both Westlaw and Lexis-Nexis also offer different information-access options, customized to an individual's needs and budget. For example, Lexis-Nexis offers on-line access to specific subject areas for one flat fee per month, with unlimited on-line time to that library of information. An entity subscribing to this economical on-line service may also access the universe of on-line resources with a keystroke, at which point the standard per-minute charge is activated. Applying this flat-rate

⁴ RTC notes that the PCS MTA auctions spanned a three month period.

fee to the electronic bidding process would be an ideal solution for accommodating small businesses.

**D. Establishing On-Line Access Charges and Software Prices
Now is Premature**

The Commission should not be setting prices for electronic remote bidding in a vacuum, without reference to a particular service or portion of spectrum, demand for the spectrum, demographics of auction participants, or knowledge of the particular modifications needed for the existing bidding software.

The Commission already has an electronic auction system in place. It was used for the recently concluded A and B Block PCS auctions. According to the Commission, it recouped its development costs for the system from the proceeds of these auctions.⁵ Now the Commission is proposing fees that would apply to future auctions with yet unknown qualities and characteristics. It makes sense that the current electronic bidding software would have to be modified to accommodate the variations in auctions for different services. But how is it possible to know that the next auction will require modifications costing \$200.00 per software package? Is that the cost of modifying the software for the C Block PCS auction, or the 900 MHz SMR auction? Furthermore, the Commission uses on-line legal data base charges as its model for pricing 900 service access to auctions. Will \$4.00 per minute always be sufficient for the Commission to recoup its 900-telephone service expenses, or might it be more than is needed for some specific auction? The NPRM fails to

⁵ NPRM, ¶ 6.

address these issues. As evidenced by RTC's unanswered questions, it is not practical or logical to set a fee schedule for remote participation in future auctions. The Commission needs to present the public with its cost findings and proposals as they relate to individual auctions, not as a universal matter.

III. CONCLUSION

Remote access to FCC auctions is essential for many small businesses and rural telecommunications providers whose participation in auctions is encouraged by both Congress and the Commission. It is imperative that the special needs of designated entities be considered when setting prices for remote access, so that remote access is truly a means of participation and not an obstacle to participation. The varied aspects of each auction need to be factors in the calculation of reimbursable costs, and those costs must be presented clearly and completely to the public prior to the commencement of each future auction. The RTC respectfully requests that the Commission act in accordance with the suggestions made herein.

Respectfully submitted,

RURAL TELECOMMUNICATIONS COALITION

By 
Caressa D. Bennet

Law Offices of Caressa D. Bennet
1831 Ontario Place, NW, Suite 200
Washington, DC 20009

(202) 319-7667

May 31, 1995

Certificate of Service

I, Caroline Hill, an employee of the Law Offices of Caressa D. Bennet, certify that on this 31st day of May, 1995, I mailed by United States mail, postage prepaid, a copy of the foregoing "Comments of Rural Telecommunications Coalition" to the following:

Chairman Reed Hundt *
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner Andrew C. Barrett *
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Commissioner Rachelle Chong *
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Commissioner Susan Ness *
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Commissioner James H. Quello*
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Karen Brinkmann, Special Assistant *
Office of Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, D.C. 20554

Rudolfo M. Baca, Acting Legal Advisor *
Office of Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

* Denotes Hand Delivery

Lisa B. Smith, Senior Legal Advisor*
Office of Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Richard K. Welch, Legal Advisor *
Office of Commissioner Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

David Cosson, Esq.
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Lisa Zaina, Esq.
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

International Transcription Services *
Federal Communications Commission
1919 M Street, NW, Room 246
Washington, DC 20554

Karen Wrege, Administrative Management Specialist *
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M St., NW, Room 5202
Washington, DC 20554

Michael F. Altschul, President
Cellular Telecommunications Industry Association (CTIA)
1133 21st St., NW, Third Floor
Washington, DC 20036

Mark Golden, Acting President
Personal Communications Industry Association (PCIA)
1019 19th St., NW, Suite 1100
Washington, DC 20036


Caroline Hill